

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-3-E

IN RE:

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Annual Review of Base Rates for Fuel)	Motion for Protective Order
Costs of Duke Energy Carolinas, LLC)	
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Duke Energy Carolinas, LLC (“DEC” or the “Company”) hereby moves the Public Service Commission of South Carolina (the “Commission”)—pursuant to 10 S.C. Code Regs. Ann. 103-829, 103-833 and 103-835; South Carolina Rule of Civil Procedure (“SCRCP”) 26(c); and other applicable rules and regulations of the Commission—for a protective order in the above-captioned proceeding. As discussed more fully below, by and through this motion, DEC requests that the Commission: (1) issue a protective order protecting from discovery certain information sought by the First Set of Interrogatories and First Request for Production (together, “Discovery Requests”) (copies attached as Exhibit A) served and filed by South Carolina Solar Business Alliance, Inc. (“SCSBA”) on June 29, 2018; (2) grant an extension of time so that the Company may more fully evaluate the Discovery Requests and respond to the portions to which the Company does not object; and (3) toll the deadline for the Company to respond to the Discovery Requests until such time as the Commission has ruled on this motion. Given the nature of this motion and the limited time period for discovery in this proceeding, the Company also requests expedited consideration of the Company’s motion or, at a minimum, its request to

toll the deadline for the Company's response to the Discovery Requests. In support of this motion, DEC shows the following:

Request for Protective Order

1. In particular, the Company objects to the following Requests for Production, which are referred to herein as the "Objectionable Requests": 26, 28, 31, 32, 33, 34, 35, 36, 37, and 38. As described herein, the Objectionable Requests are, under the SCRCP and laws of this State, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible and relevant evidence in the instant proceeding. Accordingly, the Company requests protection from responding to the Objectionable Requests.

2. 10 S.C. Code Ann. Regs. 103-833(A) provides that "[a]ny material *relevant* to the subject matter involved in the pending proceeding may be discovered unless the material is privileged or is hearing preparation working papers prepared for the pending proceeding." (Emphasis added.) Further, 10 S.C. Code Ann. Regs. 103-835 provides that the SCRCP govern all matters not covered specifically by the Commission regulations. SCRCP Rule 26(b)(1) provides that parties may obtain discovery regarding any matter "which is relevant to the subject matter involved in the pending action It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought *appears reasonably calculated to lead to the discovery of admissible evidence.*" (Emphasis added.) Finally, SCRCP 26(c) authorizes the Commission, "for good cause shown," to "make any order which justice requires to protect any party from annoyance, . . . oppression, or undue burden by expense"

3. This proceeding is conducted pursuant to S.C. Code Ann. § 58-27-865 and relates solely and exclusively to the recovery of "fuel costs," as that term is defined by the statute. The Company therefore objects to the Objectionable Requests as not relevant to or reasonably

calculated to lead to the discovery of evidence specifically related to the scope of the Commission's review as set forth in S.C. Code Ann. § 58-27-865.

4. Request for Production 26 asks for "all documents" related to challenges of solar energy discussed in an allowable *ex parte* briefing before the Commission on March 29, 2018. First, a request for "all documents" in the possession of "DEC or its consultants, representatives, agents, experts, operating divisions, business divisions, assigns, partners, and attorneys" that "summarize, present, discuss, comment on, or mention" a particular subject matter is plainly overbroad, even taking into account the time period limitation of Instruction 15. Further, the Company objects to the definition of "Duck Curve" as overbroad, ambiguous and subject to interpretation by reasonable minds. The Company, together with Duke Energy Progress, LLC, discussed with the Commission a variety of "operational challenges" associated with increased solar penetration in the March 29, 2018 allowable *ex parte* briefing, none of which are specifically identified by SCSBA's definition of "Duck Curve." Moreover, topics related to operational challenges, such as the Company's efforts to manage the variability and intermittency of solar, are not at issue in this proceeding. Therefore, the Company objects to Request for Production 26.

5. Request for Production 28 asks for "all documents" related to the costs of upgrading the Bad Creek Pumped Storage Hydroelectric Station. First, a request for "all documents" in the possession of "DEC or its consultants, representatives, agents, experts, operating divisions, business divisions, assigns, partners, and attorneys" that "summarize, present, discuss, comment on, or mention" a particular subject matter is plainly overbroad, even taking into account the time period limitation of Instruction 15. Further, the request is not reasonably calculated to lead to the discovery of admissible evidence because the Company is

not requesting to recover any costs related to upgrading the Bad Creek Pumped Storage facility in this proceeding. Therefore, the Company objects to Request for Production 28.

6. Request for Production 31 asks for “all documents” related to the relationship between weather conditions and DEC’s system load, grid conditions, net load obligation or reserve requirements. First, a request for “all documents” in the possession of “DEC or its consultants, representatives, agents, experts, operating divisions, business divisions, assigns, partners, and attorneys” that “summarize, present, discuss, comment on, or mention” a particular subject matter is plainly overbroad, even taking into account the time period limitation of Instruction 15. Further, the Company objects to this request as vague and ambiguous as the terms “relationship” and “grid conditions” are not sufficiently defined or explained. Moreover, assuming these terms were properly explained, the relationships between (a) weather and system load, (b) weather and grid conditions, (c) weather and net load obligations, and (d) weather and reserve requirements are not relevant to the subject matter of this proceeding such that the documents likely produced would not be reasonably likely to lead to the discovery of admissible evidence. Therefore, the Company objects to Request for Production 31.

7. Request for Production 32 and Request for Production 33 ask for “all documents” related to the relationship between certain load forecasts and the Company’s decisions related to generation dispatch. First, a request for “all documents” in the possession of “DEC or its consultants, representatives, agents, experts, operating divisions, business divisions, assigns, partners, and attorneys” that “summarize, present, discuss, comment on, or mention” a particular subject matter is plainly overbroad, even taking into account the time period limitation of Instruction 15. Further, the Company objects to the terms “relationship” (Request for Production 32 and 33) and “choices you face” (Request for Production 32) as vague and ambiguous, as such

terms are not sufficiently defined or explained. Moreover, while the Company's generation dispatch is related to its fuel costs, the "relationship" between load forecasts and the decisions related to generation dispatch is not relevant to the scope of this proceeding, and documents produced in response to such a request are not reasonably likely to lead to the discovery of admissible evidence. Therefore, the Company objects to Request for Production 32 and Request for Production 33.

8. Request for Production 34 asks for "all documents" related to certain load forecasts and the anticipated amount of solar during a particular day. First, a request for "all documents" in the possession of "DEC or its consultants, representatives, agents, experts, operating divisions, business divisions, assigns, partners, and attorneys" that "summarize, present, discuss, comment on, or mention" a particular subject matter is plainly overbroad, even taking into account the time period limitation of Instruction 15. Further, the Company objects to the term "relationship" as vague and ambiguous; this term is not sufficiently explained or defined. Moreover, the "relationship" between load forecasts and any forecasted amount of solar energy on any given day is not relevant to the scope of this proceeding. Therefore, the Company objects to Request for Production 34.

9. Request for Production 35 asks for "all documents" related to solar capacity and forecasts of system load. First, a request for "all documents" in the possession of "DEC or its consultants, representatives, agents, experts, operating divisions, business divisions, assigns, partners, and attorneys" that "summarize, present, discuss, comment on, or mention" a particular subject matter is plainly overbroad, even taking into account the time period limitation of Instruction 15. Further, the Company objects to the terms "relationship" and "solar name plate capacity (or solar energy output)" as vague and ambiguous; these terms are not sufficiently

explained or defined. Moreover, the “relationship” between “solar name plate capacity” and forecasts of system load are not relevant to the scope of this proceeding. Therefore, the Company objects to Request for Production 35.

10. Request for Production 36 asks for “all documents” related to solar capacity and forecasts of generating units to be operated. First, a request for “all documents” in the possession of “DEC or its consultants, representatives, agents, experts, operating divisions, business divisions, assigns, partners, and attorneys” that “summarize, present, discuss, comment on, or mention” a particular subject matter is plainly overbroad, even taking into account the time period limitation of Instruction 15. Further, the Company objects to the terms “relationship,” “solar name plate capacity (or solar energy output),” and “forecasts of the extent to which Your generating units will be operated (or fuel will be burned)” as vague and ambiguous; these terms are not sufficiently explained or defined. The Company does not have sufficient information to understand or respond to this request, and accordingly, objects.

11. Request for Production 37 asks for “all documents” related to solar generation output and net system load. First, a request for “all documents” in the possession of “DEC or its consultants, representatives, agents, experts, operating divisions, business divisions, assigns, partners, and attorneys” that “summarize, present, discuss, comment on, or mention” a particular subject matter is plainly overbroad, even taking into account the time period limitation of Instruction 15. Further, the Company objects to the term “relationship” as vague and ambiguous; this term is not sufficiently explained or defined. Moreover, the “relationship” between solar generation output and net system load is not relevant to the scope of this proceeding. Therefore, the Company objects to Request for Production 37.

12. Request for Production 38 asks for “all documents” related to the growth of utility scale solar on DEC’s system. First, a request for “all documents” in the possession of “DEC or its consultants, representatives, agents, experts, operating divisions, business divisions, assigns, partners, and attorneys” that “summarize, present, discuss, comment on, or mention” a particular subject matter is plainly overbroad, even taking into account the time period limitation of Instruction 15. Further, the Company objects to the terms “utility scale solar,” “specific time periods,” and “projects” as vague and ambiguous; these terms are not sufficiently explained or defined. The overbroad nature of this request is far beyond the scope of this proceeding. Therefore, the Company objects to Request for Production 38.

13. Consistent with SCRCP 26(c), justice warrants the Commission issuing an order protecting DEC from further annoyance, oppression, and undue burden as to the portions of SCSBA’s Discovery Requests that are not relevant to this fuel cost proceeding.

14. SCRCP 11 requires that the movant’s counsel communicate with opposing counsel and attempt to resolve the matter contained in the motion unless the movant’s counsel certifies that consultation would serve no useful purpose or could not be timely held. Movant’s counsel hereby certifies that consultation with counsel for SCSBA could not be timely held in advance of filing this motion given the extent of the Company’s objections to the Discovery Requests and the urgency of applying to the Commission for the relief sought in this motion. However, counsel for DEC is willing to negotiate with counsel for SCSBA on any of the issues identified in this motion.

15. The Company submits these specific objections well ahead of the response deadline, in good faith, and in the interest of efficiency and the expediency of the proceeding. The Company anticipates that there may be other portions of the Discovery Requests to which it

objects, and it does not intend for the objections contained within this motion to be exhaustive or to limit its right to object to other requests.

Request for Extension of Time

16. In its Discovery Requests, SCSBA requested responses to its 46 separate Interrogatories and Requests for Production within 20 calendar days (or 13 business days in this instance), the minimum amount of time permissible under Commission Regulation 103-833. The Company respectfully requests an extension of time from July 19, 2018 to August 2, 2018 so that the Company may more fully evaluate SCSBA's Discovery Requests and provide sufficient responses to the requests to which it does not object.

17. 10 S.C. Code Ann. Regs. 103-833 provides that the time for responding to discovery requests may be extended by the Commission for good cause shown. As recently recognized by the Commission, fuel cases are of growing complexity, and the parties should be afforded a sufficient opportunity to perform analyses and make recommendations. Order No. 2018-429, Docket No. 2018-9-E (filed June 20, 2018). In this case, the Company anticipates that responses to a number of SCSBA's Discovery Requests will require assembling several hundred tables of data inputs and outputs from the Company's Production Cost Model and associated reporting. In addition, the requests overlap a number of functional areas, requiring additional time for coordination and review of the overall response. The Company therefore needs additional time to fully evaluate SCSBA's Discovery Requests and to provide sufficiently responsive answers.

Conclusion

WHEREFORE, for the foregoing reasons, and for good cause shown, the Company respectfully requests that the Commission issue a protective order protecting from discovery

certain information sought by the Discovery Requests, grant an extension of time for the Company's response to the Discovery Requests, toll the deadline for the Company's response to the Discovery Requests until such time as the Commission has ruled on this motion, consider the Company's motion on an expedited basis, and provide such other relief as the Commission deems just and proper.

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